United Nations A/54/367

General Assembly

Distr.: General
21 September 1999

Original: English

Fifty-fourth session
Agenda items 118 and 127

Review of the efficiency of the administrative and financial functioning of the United Nations

Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Investigation into the field office in Lebanon of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

Note by the Secretary-General

1. Pursuant to General Assembly resolution 48/218 B of 29 July 1994, the Secretary-General has the honour to transmit herewith, for the attention of the Assembly, the report conveyed to him by the Under-Secretary-General for Internal Oversight Services on the investigation into the field office in Lebanon of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

2. The Secretary-General takes note of the findings and concurs with the recommendations set out in the report.

99-27129 (E) 181099

Report of the Office of Internal Oversight Services on the investigation into the field office in Lebanon of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

Summary

Beginning in 1998, the Investigations Section of the Office of Internal Oversight Services reviewed a variety of allegations concerning the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), particularly its field office in Lebanon. These included allegations of financial impropriety committed by a finance officer in establishing an official United States dollar account with a commercial Lebanese bank and the embezzlement of a substantial amount of medical supplies by an unidentified person. Furthermore, numerous allegations of bribery by construction contractors of UNRWA officials and of subcontracting in breach of contractual arrangements were brought to the attention of the Office of Internal Oversight Services. These general and varied accusations of endemic corruption in the field office in Lebanon were also circulated in the local print media.

Early in the course of the investigation, the evidence adduced by the investigators disproved those allegations of financial impropriety by a finance officer and embezzlement of medical supplies. On the issue of alleged endemic corruption in construction procurement activities of UNRWA, the evidence that the Office of Internal Oversight Services gathered showed that these allegations were unsubstantiated as well. Consequently, and in order to safeguard UNRWA against such allegations in the future, the Office of Internal Oversight Services reviewed UNRWA tendering procedures from several angles, including transparency, in the request, acceptance and opening of bids, the role of local committees on contracts, the issues of subcontracting and of operationally independent audits. The Office of Internal Oversight Services issued recommendations for improvement in these areas in order to reduce proactively the risk of both fraud and public exposure to sweeping suspicion of corruption. In order to reduce the jeopardy to UNRWA financial interests, the Office of Internal Oversight Services also recommended that, apart from a reaffirmation of the existing UNRWA anti-bribery policy in writing, UNRWA should develop additional procedures by which staff members are required to report all cases of attempted bribery to management to facilitate an appropriate management response. Finally, the Office of Internal Oversight Services offered recommendations in respect of procedures by which complaints of malfeasance are accepted, administratively processed and reviewed in substance.

Contents

		Paragraphs	Page
I.	Introduction	1–5	4
II.	The assessment	6–10	4
III.	The investigation	11–27	5
	A. Areas for improvement	14–25	5
	B. Complaints received by the Office of Internal Oversight Services	26–27	7
IV.	Recommendations	28	7
V.	Response of the management of the United Nations Relief and Works Agency for Palestine Refugees in the Near East	29–43	8

I. Introduction

1. In response to a request from the Office of the Secretary-General and the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in September of 1998, the Investigations Section of the Office of Internal Oversight Services conducted two investigative exercises at UNRWA. These exercises were aimed at determining whether or not UNRWA, particularly its field office in Lebanon, was subject to endemic corruption, as alleged in an intense local media campaign which was attributed to charges by the former Director of the field office in Lebanon.

2. The first investigative exercise was an assessment performed at UNRWA which was designed to evaluate the merits of the allegations that had been raised both in the media and to the Office of Internal Oversight Services. In the course of the assessment, the Office of Internal Oversight Services received more than 30 additional complaints from UNRWA staff members and others.

3. At the conclusion of the assessment in October 1998, it was agreed between the Office of Internal Oversight Services and UNRWA management that a second investigative exercise (the investigation) would be conducted with the specific aim of determining whether or not the UNRWA construction programme in Lebanon had been targeted, as alleged, by specific acts of corruption. With a view to preventing any repetition of similar negative press and to assist UNRWA in preventing corrupt practices, the Office of Internal Oversight Services decided, as recommended in its assessment, to investigate not only the specific allegations but also the potential for corrupt practices within the operation of the construction programme at the field office in Lebanon.

4. The investigation was carried out in Lebanon between January and February of 1999 and revealed that the UNRWA construction programme in Lebanon was not endemically corrupt and the specific allegations presented to the Office of Internal Oversight Services were not substantiated as had been alleged in the local press and by others to the Office of Internal Oversight Services.

5. The investigators, in the course of the four-month review, examined the 30 specific allegations by traditional investigative methodologies, that is, they reviewed relevant documents, numbering more than 2,000; conducted more than 110 interviews, including UNRWA staff and contractors; made site inspections to the locations that had been reported as being the loci of construction malfeasance; and performed analyses of the bases for a number of the most serious allegations.

II. The assessment

6. As is common practice in assessments by the Office of Internal Oversight Services, investigators sought to determine whether any of the allegations made were bona fide. For two of the three primary allegations raised, both to the Office of Internal Oversight Services and in the media, investigators were able to determine that they were without merit, specifically the loss or overconsumption of medical supplies at the field office in Lebanon with a value of $1.5 million, and the allegedly improper opening of a dollar bank account for the field office in Lebanon.

A. Medical supplies

7. The Office of Internal Oversight Services received a report of an apparent loss of a substantial amount of medical supplies with an estimated value of $1.5 million in the field office in Lebanon. The evidence suggests that the allegation arose without any substantial basis to support it and was reported to the Office of Internal Oversight Services without sufficient enquiry to ascertain the facts. Indeed, it appears that the alleged deficit of $1.5 million, which exceeded the annual usage budget by 150 per cent, occurred on paper only as a result of computer programming problems complicated by data-entry errors.

B. Dollar bank account

8. It was alleged that a dollar bank account was opened improperly by the Field Finance Officer in a local bank. For a number of months, prior to the opening of the bank account, the Field Finance Officer and the treasurer at UNRWA headquarters (who was acting controller) had been engaged in extensive discussions on the steps to be taken for the resolution of certain payroll-related issues. As part of the measures they agreed to undertake, a dollar account was opened by the Field Finance Officer in a Lebanese bank. As such, the evidence does not support a finding of impropriety on the part of the Field Finance Officer, as the assertion that the opening of the account was *ultra vires* is not correct. The further claim that this action caused UNRWA to suffer a financial loss also was not substantiated.

C. Construction

9. Most of the allegations in the local media and received by the Office of Internal Oversight Services with respect to construction were in relation to the field office in Lebanon.

10. The assessment team was not able to resolve the specific allegations of corruption in the construction area during the brief assessment phase. For this reason, it was agreed with the Commissioner-General that the Office of Internal Oversight Services would return to the field office in Lebanon to resolve the specific allegations and examine the potential for corrupt practices in the operations of the field office's construction programme.

III. The investigation

11. It should be noted that, in the course of the assessment (see above), the Office of Internal Oversight Services received a number of specific allegations which ranged from particular acts by individuals to more general allegations of a non-transparent bidding process for construction projects. A number of the complainants also reported to the Office of Internal Oversight Services their concerns that the mechanism by which allegations of corruption were investigated in UNRWA was insufficiently transparent.

12. The investigation examined these allegations. The specific allegations against individuals were not substantiated by the weight of the evidence. In this regard, these allegations were found to have been based by those who made them largely on speculation, misunderstanding, limited and/or inaccurate information, hearsay and opinions. It is the view of the Office of Internal Oversight Services that to repeat such allegations in this report, with their details, given the dearth of evidence to support them, would serve no useful purpose.

13. In addition to advising UNRWA of specific issues for further review by management, the Office of Internal Oversight Services has identified areas for improvement in the operation of the field office's construction programme and has made recommendations to the programme managers which are designed to correct them. Additional recommendations for improving the management of corruption complaints were made which have Agency-wide applicability.

A. Areas for improvement

14. Based on both the assessment and the investigation, the Office of Internal Oversight Services has identified areas which, it considers, would benefit from actions and policies to further decrease the potential for construction corruption and, at the same time, decrease the concerns both within and outside UNRWA that the latter is alleged to have an insufficiently transparent system of managing complaints of corruption.

1. Bidding processes

15. The bidding processes currently followed in the field office in Lebanon do not sufficiently reduce the opportunities in the area to engage in corrupt acts as follows:

(a) The technical office, which is responsible for technical advice on construction projects, allows contractors who are awarded construction contracts to engage undisclosed subcontractors; owing to a variety of local factors, these firms may simply be using the name of the contractor and may also be the only one actually involved in the construction, but with whom UNRWA has no contractual relationship;

(b) The technical office can undertake pre-qualification of contractors but without defined procedures and criteria;

(c) The technical office can decide to disqualify contractors by discretionary means without identified criteria;

(d) The technical office engages in non-public bid openings;

(e) The Field Committee on Contracts, which is responsible for evaluating bids received and advising management thereon does not always have a fully informed discussion during its deliberative processes; while the Committee is not the decision-maker (that role falls to the Field Director, who takes advice from the Committee and the headquarters construction experts), its role in protecting the Agency by careful and expansive evaluation of the proposals submitted to it makes it an important anti-corruption factor.

16. The team of the Office of Internal Oversight Services held discussions with the Deputy Director of the field office in Lebanon on the issue of how to increase transparency in bidding procedures, which were established in 1996 but have since been occasionally modified. He acknowledged that, after three years of the field office's "open tender" process, there had been an initial increase in the number of

competitive bids, but there had been a "saturation point" which was followed by a decrease in the number of newcomers doing business with UNRWA. He diagnosed it as a result of the tender procedures, mainly related to the fact that the results of the tenders were not revealed to the unsuccessful bidders. Thus, an unsuccessful bidder who receives no feedback as to why his tender was unsuccessful may become discouraged from future bidding. In order to counteract this, the Deputy Director suggested that bid results be published. The Office of Internal Oversight Services regards this as a sound suggestion. Moreover, during this inquiry, the Office of Internal Oversight Services has had occasion to observe that bidders who have been disqualified or whose low bids have been rejected not only are not advised of the reason for the decision but also are often treated as disqualified thereafter. The reasons for such disqualifications become part of the technical office's institutional memory, which in turn tends to discredit the contractors' capacity to handle future contracts. UNRWA advises that this suggestion is one of the items under review by the headquarters committee on contracts.

17. UNRWA should introduce additional written policies and procedures for its bidding processes, notably for the selection and rejection of bidders. Written procedures which clearly define these processes will improve both accountability and transparency.

18. In its examination of a number of contracts before the Field Committee on Contracts and in interviews with past and present members, the Office of Internal Oversight Services has noted that the Committee is not always provided by the technical office with all of the relevant information. For example, qualification of bidders, reasons for disqualifying low bidders and the utilization of subcontractors are not always provided to the members of the Committee. For the Committee to operate as the contracting watchdog of the field office in Lebanon, it needs to have all relevant information and to engage in a full discussion and airing of views before making a recommendation to management.

2. Contractors

19. By testimonial evidence, some contractors have made regular and persistent attempts to bribe staff. In his interview, for example, the Deputy Field Technical Officer stated that contractors offered him bribes virtually every day which ranged from lunches to offers for him to name his price. These offers were related to the construction of classrooms in a camp school in 1998 and to the construction of a health centre. Although the Deputy Field Technical Officer stated that he had refused these offers, which were exclusively verbal and had been made outside the presence of witnesses, he acknowledged that he had not notified his supervisors of these attempts. Furthermore, a contractor who was not one of those referred to by the Deputy Field Technical Officer admitted to investigators from the Office of Internal Oversight Services that he had paid bribes for construction contracts, but he could offer no evidence or verifiable details in support of such payments. Additionally, the investigation also reviewed a case in which a contractor subjected the Agency to unethical practices. This firm, while an approved contractor for the field office in Lebanon, submitted a forged bank guarantee in connection with a construction project. The Agency responded by removing the firm from its list of approved contractors. Earlier, in 1995, the same contractor was found to have bribed staff members of the field office but, despite this fact, it was able to bid for contracts in return for disclosing those bribes. However, it continued its corrupt practices, with attempts to bribe staff again in 1998. In view of the firm's persistent involvement in undermining or attempting to undermine the integrity of the Agency staff and resorting to forgery in its business dealings with the field office in Lebanon, the field office's sanction of removing the firm from its list of approved contractors may be insufficient as a deterrent to other contractors. The Office of Internal Oversight Services was advised that the offence of forgery is a crime under Article 453 of the Penal Code of the host country.

20. These examples indicate the need for a strengthened mechanism to evaluate contractors with which the field office in Lebanon does business. Such evaluations of the performance of contractors is a common practice in construction programmes in a variety of national jurisdictions and may include issues related to the quality and reliability of the work as well as the integrity of the contracting firm.

3. Management of allegations of corruption

21. Rumours and allegations of corruption are common in the region. As allegations against government structures are a worldwide phenomenon, UNRWA, which provides food, shelter, health and education and other such services, is also similarly susceptible to allegations. UNRWA management has generally tried to review allegations of corruption reported to them. UNRWA utilizes boards of inquiry, its internal auditors and joint disciplinary committees as well as ad hoc panels to assess allegations received. The UNRWA Director of Operations has noted that the Agency receives a large number of allegations which managers have to evaluate. He stated that one of the ways to evaluate such

complaints used by UNRWA was to look at the credibility of the complainant. This was necessary, he said, because if management did not do so, they would have instituted numerous boards of inquiry.

22. However, UNRWA has no clear guidelines for operationalizing the boards of inquiry or other mechanisms of inquiry which set forth procedures, standards, membership or establishment of an evidentiary threshold. Apart from boards of inquiry, which are limited in experience and skills for addressing a complex matter, UNRWA does not have a formal mechanism with written procedures for addressing complaints in a uniform and systematic basis.

23. Complex allegations of corruption, by their very nature, are difficult to resolve even where there is an independent and experienced body to handle such complaints. Boards of inquiry are static in that they are created on an ad hoc basis to hear a particular case and make particular findings or recommendations but have no precedent-setting value or institutional memory. Even though UNRWA has been attempting by the various means listed above to address corruption reports, the lack of an oversight mechanism which provides a continuous and experienced anti-corruption force should be addressed. UNRWA may be better served and its donor States reassured if a permanent and operationally independent capacity for deterring, treating and addressing corruption were established.

24. One responsibility for such an independent function would be to determine the difference between complaints that are legitimately reported but found to be unsubstantiated from those that are the result of malicious or bad-faith reporting. It is essential to distinguish those who have made observations and have confused those observations with evidence from those who are operating mala fide.

25. Allegations of administrative misconduct or corrupt practices must be seen to be fully, professionally and independently investigated. The commitment of UNRWA management is essential in this regard. Individual allegations of corruption, even if found by investigation to be substantiated, will have a lesser impact on the Agency and its important work if UNRWA is seen to have, and does in fact have, an established mechanism to review, evaluate and resolve them. As the Office of Internal Oversight Services has noted the absence of endemic corruption in the construction programme at the field office in Lebanon, the recent establishment of written policies and procedures for investigating allegations should preclude individual cases from automatically giving rise to the perception of a more general corruption problem.

B. Complaints received by the Office of Internal Oversight Services

26. As mentioned earlier in the present report, the Office of Internal Oversight Services received a large number of complaints from Agency staff members and individuals outside the Agency. Some of those who came forward came in the belief that they were reporting a genuine complaint even though, in the majority of cases, they were often confused between what is necessary to ground a complaint in evidence and registering a concern. Others came forward as interested parties, but when their complaints were examined further, no evidence was found to initiate a counter-investigation to prove mala fide.

27. In addition, a number of the complaints were received from Agency staff, most of whom were not in management positions, or persons who have commercial contacts with the Agency. In this regard, it is important to stress that all those making specific allegations must do so with due regard for their impact and credibility. However, for those who made such reports to the Office of Internal Oversight Services and who had management responsibilities, there is an even greater access to facts and a concomitant obligation to ascertain sufficient information to make the report substantial, rather than rumour, and to report with greater regard for both the well-being and the public perception of the Organization. This is not to argue against proper reporting; on the contrary, it is rather to suggest that proper reporting institutionally and simultaneous leaks to the media are neither compatible acts nor responsible management. One senior manager who did so is no longer with the Agency.

IV. Recommendations

28. The Office of Internal Oversight Services has made the following recommendations to UNRWA:

Recommendation 1: Keeping in view the attempts by contractors to bribe the Agency's officials, the Agency should develop and enunciate a warning against bribery aimed at persons or commercial concerns desirous of doing business with it or having an ongoing contractual relationship. Furthermore, such policy clearly should spell out the adverse consequences of attempts to bribe. Such a policy should be communicated in writing with a frequency

and through a medium judged appropriate by the UNRWA management (such as tender documents, contracts and public notices in the Agency's premises) to communicate clearly the Agency's intention of not tolerating such practices (IV98/116/01);

Recommendation 2: The Agency should enunciate a policy which makes it incumbent upon staff members who have been approached by persons or business concerns with an offer of a bribe to inform their supervisors forthwith of such attempts and record such attempts in writing so that UNRWA management can take appropriate action (IV98/116/02);

Recommendation 3: The Agency must establish written policies and procedures for dealing with complaints with a view to ensuring that such allegations are inquired into impartially, expeditiously and transparently. Furthermore, records of such inquiries should be maintained in a format and for a time sufficient for the appeal period and for review to assess the patterns of problems identified. The Office of Internal Oversight Services will assist in the development and oversight of such policies and procedures (IV98/116/03);

Recommendation 4: The Commissioner-General should continue to pursue his programmes to reform and make more transparent the internal oversight and review processes of UNRWA by including in the mandate for the internal auditors a provision for operational independence in the audits they elect to conduct and by providing copies of the audit programme of work to the Under-Secretary-General for Internal Oversight Services, and such copies of audit reports as may be requested by the Office of Internal Oversight Services, as is done with other programmes (IV98/116/04);

Recommendation 5: Given the importance of the role of the Field Committee on Contracts, it is recommended that the Commissioner-General cause a directive or other writing to be issued publicly on the authority, responsibilities and independence of the Committee in reviewing and advising on the award of contracts to reaffirm its place in the anti-corruption policies of UNRWA (IV98/116/05);

Recommendation 6: The Agency should introduce into its procedures provisions aimed at increasing transparency in the process of pre-qualification and disqualification of contractors. Such efforts may include, for example, written communications to unsuccessful bidders of the price at which the Agency awarded a contract to a successful bidder (IV98/116/06);

Recommendation 7: Contractors' books of accounts for projects being undertaken by them for the Agency should be contractually required to be open for inspection by the Agency's auditors for a period deemed sufficient by the Agency to protect its interests (IV98/116/07);

Recommendation 8: Consistent with United Nations procurement rules, the Agency should introduce, with respect to subcontractors, policies that protect its interests by enabling the Agency to be in full possession of all the relevant facts about the existence, status and nature of subcontractors (IV98/116/08);

Recommendation 9: UNRWA management should undertake appropriate inquiries into contractors named as attempting to offer bribes (IV98/116/09);

Recommendation 10: Pursuant to legal advice received by the Office of Internal Oversight Services, the Agency should initiate appropriate action regarding the contractor that submitted the forged document in order to demonstrate its intolerance of unethical business practices (IV98/116/10).

V. Response of the management of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

29. *UNRWA is pleased to take note of the conclusions of the inquiry into the field office in Lebanon, namely, that allegations about the improper use of medical supplies and the opening of a dollar bank account were found to be without merit; that there was no evidence to support the allegations of endemic corruption at the field office in Lebanon; and that specific allegations against individual UNRWA staff members were not substantiated. At the same time, UNRWA recognizes that there are a number of action points for the Agency to consider and pursue. The responses of UNRWA to the recommendations of the Office of Internal Oversight Services are detailed below.*

Agency policy on attempted bribery and acceptance of gifts (recommendations 1 and 2)

30. *Recommendations accepted. It should be noted that the Agency's general conditions of contract already include a clause in which the contractor "warrants that no official of UNRWA has been or shall be admitted by the supplier to any*

direct or indirect benefit arising from the contract or the award thereof". In respect of the recommendation, the UNRWA Department of Legal Affairs, in consultation with field directors, the Chief of the Supply Division, the Head of the Technical Office and other relevant officials, are developing such a policy statement to further strengthen existing Agency contract procedures after a review of tendering rules, technical instructions and standard contract terms. The Agency will also develop appropriate mechanisms to implement such a policy, including, for example, the giving of undertakings by bidders. The policy and mechanisms to implement the policy will be introduced together with appropriate exposure through dissemination, publication and announcements.

31. *It is already Agency policy that staff should report offers of bribes etc. to their supervisors. Following the suggestion of the Office of Internal Oversight Services, a directive was circulated to all Agency staff in May 1999 reminding them of their obligations under the staff rules and Agency policy, including the requirement to notify supervisors immediately in writing of any attempt to offer staff any gift, gratuity, financial benefit or favour of any kind from any entity or individual doing or seeking to do business with the Agency. Supervisors are in turn required to report such matters to the administration so that appropriate follow-up action may be taken by the Agency. Disciplinary measures are available to the Agency under the staff rules should any staff member be in breach of this directive.*

Additional oversight mechanisms and related procedures (recommendation 3)

32. *Recommendation accepted. The UNRWA existing oversight mechanisms have over many years of practice been shown to be effective for the needs of UNRWA. The mechanisms at the disposal of UNRWA include: boards of inquiry; joint disciplinary committees; internal audit by UNRWA auditors; external audit by United Nations auditors; the Audit Committee (UNRWA oversight body); the Headquarters Committee on Contracts and the Field Committee on Contracts. Complaints are also reviewed on an ad hoc basis to determine credibility and the need for pursuit within the options noted above. These mechanisms have been used frequently and effectively to deal with allegations.*

33. *This does not mean that there is no room for improvement. In this context, it should be noted that, to supplement existing mechanisms, the Agency has adopted an additional mechanism for inquiring into and resolving complaints and allegations, as suggested in reports of the Office of Internal Oversight Services. A directive establishing a so-called "whistle-blowing" mechanism was issued in June 1999. This directive establishes procedures for the submission, receipt and consideration of allegations and complaints concerning the misappropriation of Agency assets, fraud or abuse of authority, whether initiated by UNRWA staff members or third parties. These procedures are designed to ensure that all such allegations and complaints received will be recorded, reviewed and processed in a judicious manner with confidentiality and timeliness. A senior official of the Agency has been designated by the Commissioner-General as the central point responsible for the coordination of all activities that may arise concerning the relevant investigations.*

Status of the UNRWA internal audit function (recommendation 4)

34. *Recommendation accepted. The UNRWA internal audit function sits outside the field/programme structure and reports directly to the Commissioner-General. There are no restrictions on the independence of its work. The annual programme of work and all audit reports are copied to the external auditors of the United Nations. The approved programme of work and copies of audit reports will be copied to the Office of Internal Oversight Services as requested, for information.*

Contract-awarding authorities (recommendation 5)

35. *Recommendation accepted. An in-house review of the authority, responsibility and independence of the field contracts committees is under way. This review will take into account both the report of the Office of Internal Oversight Services and a recent consultancy funded by the United Kingdom of Great Britain and Northern Ireland on the Agency's procurement function which highlighted the need to review the composition and functioning of the headquarters contracts committee and the field contracts committees.*

36. *The following background on the respective roles of the Headquarters Contracts Committee and Field Contracts Committees may be useful:*

(a) UNRWA organization directive No. 10 sets out the policy and framework procedures for the award of contracts. Under this directive, the authority to award

contracts is vested in the headquarters contracts committee, Agency officers and the field contracts committees, depending on the value and nature of the contract in question. The awarding authority must, in each case, "satisfy itself that the contract proposed has been examined and approved by the legal, financial and other officers as appropriate, that adequate tenders be requested, that, all other conditions being equal, the lowest price or bid be accepted and that the contract proposed is overall in accordance with the Agency's best interests".

(b) Within this framework, the role of the Field Contracts Committee will change depending on the value of the contract. Where the value of the contract is below $100,000, the Field Contracts Committee advises the Field Office Director whether to award the contract or not. Where the contract is in excess of $100,000, which is the case for the majority of UNRWA contracts, the Field Contracts Committee advises the Field Office Director to submit the contract, with recommendations, to the headquarters Contracts Committee for approval. The Field Contracts Committee does not itself approve or award contracts; ultimate responsibility for contracts is vested in the headquarters Contracts Committee and/or the Field Office Director, depending on the value of the contract.

The bidding process, including communication with bidders (recommendation 6)

37. *Recommendation 6 requires further consideration within UNRWA. UNRWA is re-examining its policy on procedures for pre-qualification, qualification and disclosure of information. The Agency is already involved in a review of its tendering and contracting procedures and has engaged specialist consultants with financial support from the Government of the United Kingdom. The consultants' report has been delivered, and its principal recommendations, together with those of the Office of Internal Oversight Services relating,* inter alia, *to increased transparency in the pre-qualification and disqualification of contractors, are being evaluated by an internal interdisciplinary process which will identify and address any shortcomings in established rules and procedures.*

38. *As far as disclosure of bid prices is concerned, the Agency is mindful of the need for balance between the legitimate goal of transparency in the Agency's procedures and the interest of the Agency and bidders in maintaining confidentiality. Disclosure of bid prices would be a breach of confidentiality and entails the risk of less competitive bidding for UNRWA tenders. Potential bidders may not bid if they know that price-sensitive information will be made publicly available. The Agency could, however, on a case-by-case basis and taking account of the market, consider if price-sensitive information can be publicly released. In sophisticated and highly developed international markets, increased information can lead to increased competition. However, in smaller local markets, such as those in the area of UNRWA operations, revealing prices can lead to collusion, price-fixing and reduced competition. UNRWA is willing, in appropriate cases, to publish in general terms the principal outcome in bidding exercises. This would normally be limited to the value of the winning bid and the name of the winning bidder. The release of this information could be productive in respect of construction contracts but of limited or no benefit in other procurement situations.*

39. *It should be noted that the procedures and policies applied in the field office in Lebanon are in use Agency-wide; they are not* sui generis. *Any changes resulting from the inquiry by the Office of Internal Oversight Services and the United Kingdom consultancy would therefore be introduced Agency-wide.*

Access to contractors' books of accounts (recommendation 7)

40. *Recommendation 7 requires further consideration within UNRWA. It is not standard auditing practice for contractors' books of accounts to be open for inspection. It is unlikely that a potential contractor would find such a contractual requirement acceptable and its introduction could easily limit the number of bidders, thereby reducing competition. An alternative would be to require any contractor to undertake to maintain all relevant information relating to the contract and/or project for a reasonable time after the completion of the project and to provide on demand such information relating to the contract as the Agency might reasonably require. In certain appropriate cases (for example, in cases involving cost reimbursement, shared cost arrangements or asset management), UNRWA could include a provision that contractors' books of accounts for an Agency project be open for inspection. However, in most of the procurement in which UNRWA is involved, such a provision is unlikely to be acceptable to potential bidders or to be of any benefit to the Agency; it could indeed be counter-productive. The opening of accounts per se will not reduce opportunities for malpractice and bribes. Contractors could easily keep duplicate sets of accounts which would not incriminate them. It is more likely that an*

instance of bribery will be detected when there is no provision in a contract. Furthermore, the requirement to open books of accounts will, in many cases, deter reputable companies from bidding as they would resist undue intrusion into their records, which they regard as confidential business documents.

Subcontracting (recommendation 8)

41. *Recommendation accepted. Standard UNRWA building contracts already require that the contractor may only subcontract after receiving the written consent of the Agency, and that the contractor remains fully responsible for any acts and omissions of subcontractors. There is no prohibition on subcontracting; it is not per se disadvantageous to the Agency. It is common practice in the region (and in many countries outside the region) for contractors to work on a managerial basis only and to hire labour and specialist subcontractors for the duration of the project only. Furthermore, the Agency reserves the right to appoint, and the contractor is obliged to accept, any subcontractor or supplier the Agency wishes to nominate. UNRWA has initiated action to ensure that a mechanism is in place so that subcontracting does not take place without the Agency's knowledge and approval. In particular, field technical officers have been reminded of the need to ensure that the standard contract provisions concerning subcontracting are properly enforced.*

Follow-up to allegations of attempted bribery (recommendation 9)

42. *Recommendation accepted. UNRWA will seek information from the contractors alleged to have attempted to bribe the Deputy Field Technical Officer.*

Follow-up to case of forgery (recommendation 10)

43. *Recommendation accepted. The Agency's Department of Legal Affairs is examining the issue and considering what further action is appropriate. Potential action being contemplated includes referral of the case to the judicial authorities (after taking into account possible adverse consequences, such as whether the Agency's privileges and immunities might be compromised) and/or reporting details of the forgery to professional and standard-setting institutions, financial institutions and other United Nations organizations.*

(*Signed*) Karl Th. **Paschke**
Under-Secretary-General
for Internal Oversight Services